No. 10265

United States Circuit Court of Appeals

For the Ninth Circuit

MASON B. PATTEN,

Appellant,

—vs.—

J. CHARLES DENNIS, United States Attorney in and for the Western District of Washington.

Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

REPLY BRIEF OF APPELLANT

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RESTATEMENT OF CASE

District Attorney states that Mason B. Patten was fired for inefficiency which fact is immaterial to cause as presented to this Court. This action is brought against said appellee for refusal to bring action on his behalf upon information of criminal acts against the laws of the United States as passed by Congress, causing irreparable injury to the person of the appellant by such unlawful acts. (Tr. 3)

(Tr. 24) is motion of clarification of issues to this Court. This the district attorney knows is what this action is about as can be shown if motion of appellee is granted. (Tr. 28). This petition was filed upon unsuccessful attempts to prevail upon U. S. District Attorney to bring action in his behalf (Tr. 25) and U. S. Attorney General. (Tr. 25)

Letter of March 19, 1942 was presented to judge of Court as to the injury to the reputation of appellant by the unlawful acts of William B. Smith, Vaughn Bogard, Albert E. Larsen, by making the false statements which I have offered to prove as false to the Navy Department and refused the opportunity to do so. The United States District Attorney has resisted any action on appellant's part to prove his allegation of perjury and discrimination up to and including the date of August 13, 1941. Also the charge is made against G. D. Hile, Assistant District Attorney, of failing, as a continuing part of the conspiracy hereinbefore alleged and complained of. *Burkhardt v. U. S.* 13 F. 2d 841; *Coates v. U. S.* 59 F. 2d 173.

APPELLEE'S POINTS RELIED UPON WERE:

1. That appellee filed a motion to dismiss, as proper pleading quoting (Rule B)
2. Court had no juridiction.
3. Petition did not state a cause of action.

I.

RESPONSE TO PLEADING

In response to pleading Apellee joined with his motion to dismiss, misjoiner of persons, motion to make more definite and certain which is not proper pleading. (Rule 12E)

II.

COURT HAS JURISDICTION.

This action is for redress of injury to rights and privileges as secured to appellant by the laws of the United States between a citizen of the United States and officer of the United States by denial of equal protection and due process of law.

Erdman v. Mitchell 56 Atl. 331, 207 Pa. 79,
Coates v. U. S. 59 F. 2d 173

The United States government is not a party to any action brought by a citizen of the United States against another citizen sounding in tort or of a criminal nature. Therefore, this suit is between a citizen of the United States and an officer of the United States.

Rocky Mountain Bell Telephone Company v. Montana, A. F. L. 156 F 821

D. C. Conn. 1925, 6 F. 2d 937, *Maul v. U. S.* 274 U. S. 501.

III.

PETITION DID STATE A CAUSE OF ACTION

Allegation of plaintiff that a conspiracy was formed to violate the laws of the United States as stated:

Erdman v. Mitchell 56 Atl. 331,

Rocky Mountain Bell Telephone v. Montana A. F. L. 156 F. 821

Volume 5, *Ruling Case Law*, Page 1068, Section 14, Volume 5, Ruling Case Page 1090, Section 41

are sufficient to establish the crime as alleged. These men so-named are ancillary to the action at bar.

D. C. Tex. (Criminal Code, Section 37, 18 U. S. C. A., Section 88) Appellant's Brief, page 11. *U. S. v. Gilliland*, 35 F. Supp. 181, U. S. District Attorney is charged by law to bring such charge before a Grand Jury (Brief Appellants, page 10) Title 8, Section 49, Chapter 3, U. S. C. A. Title 28, Section 485, Judicial Code, U. S. C. A. which District Attorney claimed to have tendered to appellant after appellant appealed to this Court (Tr. 28).

MOTION

Appellee has filed a motion in this Court for dismissal of this action. Appellant so moves this Court to deny said motion. Authority:

Vann v. Union Central Life Insurance Company
191 P. 175, 79 Okl. 17.

Motion is made to this Court for review of Grand Jury Proceedings as held in the City of Seattle on Tuesday, August 25, 1942, with the allegation that the hearing was conducted not in the interest of appellant by Assistant U. S. District Attorney G. D. Hill, as biased and predjudicial against plaintiff, who should be a party to this action.

Respectfully submitted,

MASON B. PATTEN,
Appellant.

APPENDIX

Interference with Employment.

Erdman v. Mitchell 207 Pa. 79, 56 Atl. 331

A conspiracy is a combination of two or more persons by some concerted action to accomplish an unlawful purpose. It is unlawful to deprive a mechanic of work by force, threats or intimidation of any kind.

The judge said:

The first article of the Constitution says: That the general great and essential principles of liberty and free government are to be recognized and unalterably established, we declare that all men are born equally free—and have certain inherent and indefeasible rights, among which are those of employing and defending life and liberty, of acquiring, possessing and protecting property and reputation and pursuing their own happiness.—

—Whenever a Court of common pleas can be reached the citizen, three great and essential principles of free government must be recognized and vindicated by that court, and the indefeasible right of liberty must be protected under the common law (judicial power of the court.)

Conspiracy at common law is a confederacy of two or more persons wrongfully to prejudice another in

his person or character—to obstruct public justice.

Johnanson v. State, 26 N. J. L.

A combination lawful within itself may become a conspiracy when the purpose in view is to ruin or damage another because of his refusal to do some act against his will or judgment.—

—Every man has a right, as between himself and others, to full freedom in disposing of his own labor—, according to his own will, and anyone who invades that right without lawful cause or justification commits a legal wrong, and, if followed by an injury caused in consequence thereof, the one whose right is thus invaded has a legal ground of action for such wrong.

Rocky Mountain Bell Telephone Co. v. Montana, A. F. L. 156 Federal Reporter, page 821.

Title 28, U. S. C. A. (Judicial Code Section 485)

It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offense cognizable under the authority of the United States and all civil actions in which the United States is concerned.

Davis v. F. W. Woolworth 54 F 2d 366 (Tr. 27)

(1) (2) A consideration of the questions raised by

the motion to dismiss would require the same examination of the evidence offered as would a consideration of the appeal, motions to dismiss appeals are not looked upon with favor. *Vann v. Union Central Life Insurance Co.* 79 Okl. 17, 191 P. 175.

Vann v. Union Central Life Ins. Co. 191 p. 175, 79 Okl. 17. (Syllabus by the Court)

(10) Experience, observation, the thoughtful consideration of the subjects through many questions of men by publicts and statesmen, have produced a concensus of opinion throughout the civilized world that the final decision of grave issues should not be left to the Court or Judge who first hears or tries them, however learned, able, wise and impartial he may be, but that those disappointed in the first decision should be permitted to invoke the judgment of other unpredjudiced minds upon the righteousness of the conclusions. Motions to dismiss appeals are not looked upon with favor, and unless it clearly appears from the appellant's statements of his own case that the appeal is wholly without merit, or it is manifestly clear from a casual examination of the record that the only point which is a clear and unmixed question of law, fairly and finally settled adversely to plaintiff in error by the decisions of this court, or the court is without juris-

diction, or the case is moot, a motion to dismiss will not be considered in advance of the date the case comes on regularly to be heard on its merits.

Supreme Court of Okla. June 29, 1920.

Vol. 5 Ruling Case Law, page 1068, Section 8.

An unlawful combination to injure, oppress, threaten and intimidate a citizen of the United States in the free exercise of a right and privilege secured to him by the Constitution and laws of the United States, and because of his having so exercised same, is a conspiracy indictable and punishable under the United States Revised Statutes, *U. S. v. Lancaster*, 44 Fed. 896, 10 L. R. A. 333.

Vol. 5 Ruling Case Law, page 1068, Section 14.

A combination or confederation formed for the purpose of injuring the reputation of a person is a criminal conspiracy.

Vol. 5 Ruling Case Law, page 1090, Section 41.

Accurately speaking, there is no such thing as a civil action for conspiracy. There is an action for damages caused by acts pursuant to a formal conspiracy, but none for the conspiracy alone.

D. C. Conn. 1925, 6 F. 2d 937, (Reversed C. C. A., 13 F. 2d 433 and affirmed *Maul v. U. S.* (47 Ct. 735,

APPENDIX

274 U. S. 501, 71 L. Ed. 1171)

Act by officer in excess of authority is not act of the Government—The underwriter.

Conspiracy:

An indictment for conspiracy need not show that the conspiracy succeeded. But an allegation of commission of any overt act in furtherance therefore is sufficient.

U. S. v. Gilliland et al D. C. Tex. E. D. Texas, Tyler Division Feb. 20, 1940.

C. C. A. Cal. 1932, *Coates v. U. S.* 59 F. 2d 173,

Persons knowing conspiracy to violate law and assisting in any way in furthering unlawful enterprise is guilty.